



The Attorney General of Texas

December 31, 1982

MARK WHITE
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002-6986
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

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Mr. Bob E. Bradley
Executive Director
Texas State Board of Public
Accountancy
3301 Northland Drive, Suite 500
Austin, Texas 78731

Open Records Decision No. 351

Re: Information relating to
a missing carton containing
examination papers for May,
1982, Uniform CPA examination

Dear Mr. Bradley:

In May, 1982, the Texas State Board of Public Accountancy conducted a uniform certified public accountant examination in Galveston, Texas. One of the cartons of test papers written at this examination was lost. You have received inquiries concerning this missing carton from an examinee and from a state representative. You have asked whether the Open Records Act, article 6252-17a, V.T.C.S., requires you to give these individuals the information which they seek.

The state representative requested:

1. List of names and addresses of individuals whose papers were included in the missing carton.
2. The appropriate contact person who represents the companies responsible for delivery.

Questions 3 and 4 do not seek access to records but inquire about board policy and actions. Thus, they need not be addressed in an Open Records Decision.

The examinee also requested the names and addresses of the examinees whose papers were lost. In addition, he requested:

1. Name and address of the freight company [responsible for delivery].
2. The bill of lading number.
3. Date of shipment and approximate date of arrival at intended destination.

After this office received your request for an Open Records Decision, the carton was found.

Your first argument is that all of the foregoing information may be withheld from disclosure under section 3(a)(3) of the Open Records Act, which excepts from required disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In support of your section 3(a)(3) claim, you advised us, in a letter dated September 7, 1982, that:

The request by [the state representative] should be considered in light of the fact that... [a constituent] whose examination paper is among those missing, represented in a phone call to this office his intention to sue the board in a class action suit charging the board, or its members, with negligence. [The constituent] has made clear his interest in pursuing litigation against the board. Although the matter involves a group, it is a small group with similar claims and issues involved. The anticipation of litigation is a reasonable one related specifically to the limited group of candidates whose papers were lost.

We understand that no actual steps toward litigation have been taken, and that you have received no additional threats of litigation.

This office has repeatedly held that a "mere chance" of litigation does not trigger section 3(a)(3). For this section to be applicable, litigation must be, if not actually pending, at least "reasonably anticipated." Open Records Decision Nos. 311 (1982); 183 (1978); 139 (1976). In our opinion, litigation cannot be said to be "reasonably anticipated" within the meaning of section 3(a)(3) where the only indication that litigation might ensue comes in the form of a threat made by someone via telephone, particularly where the person who made the threat has done nothing since then to show that his threat was meaningful. The fact that the examination papers have been

found should render litigation even less likely. We therefore conclude that section 3(a)(3) is inapplicable in this instance.

You also contend that some of the requested information may be withheld under section 3(a)(1) of the Open Records Act, which excepts from required disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Specifically, you contend that the names and addresses of the examinees whose papers were lost are protected by section 25 of article 41a-1, V.T.C.S. Alternatively, you assert that the release of the examinees' names and addresses would "possibly subject those persons to mental suffering, shame, or humiliation."

Section 25 of article 41a-1 provides:

Any file maintained or information gathered or received by the board concerning a candidate, licensee, or former licensee shall be available for inspection by that candidate, licensee, or former licensee during normal business hours at the offices of the board in Austin. A candidate, licensee, or former licensee may by written communication authorize the board to make any information about that candidate, licensee, or former licensee available for inspection by designated persons or available for inspection by the public at large. Except upon such written authorization, all information received or gathered by the board concerning the qualifications of any licensee or candidate to register as a public accountant or to receive a certificate as a certified public accountant and all information received or gathered by the board concerning a disciplinary proceeding against a licensee under Section 22 of this Act prior to a public hearing on the matter shall be confidential and shall not be subject to disclosure under [Article 6252-17a, V.T.C.S.]

We must decide how this section applies to information concerning individuals who have taken the certified public accountant examination. In our opinion, these individuals are "candidates" within the meaning of section 25.

The language of section 25 is ambiguous. The first sentence provides that "[a]ny... information gathered or received by the board concerning a candidate" shall be available for inspection by that person. (Emphasis added). The second sentence provides that a candidate may "by written communication" authorize the board to make

"any" information concerning him available for inspection by certain parties or by anyone. Taken together, these two sentences suggest that no information concerning a candidate which is received by the board may be disclosed to anyone other than that candidate without his written permission.

The third sentence indicates otherwise, however. The first part of this sentence provides that except upon written authorization, information "concerning the qualifications of any... candidate to register as a public accountant or to receive a certificate as a certified public accountant..." is to be kept confidential. (Emphasis added). (The remainder of the sentence deals with information which is irrelevant to the subject at hand and will not be considered in this discussion.) Thus, the question becomes: does section 25 protect from disclosure, absent a candidate's written authorization, all information concerning that candidate, or only information concerning the candidate's qualifications to register as a public accountant or to receive a certificate as a certified public accountant?

In Black v. American Bankers Insurance Company, 478 S.W.2d 434, 437 (Tex. 1972), the Texas Supreme Court stated:

[A]ll sections, words and phrases of an entire act must be considered together; every provision should be construed with every other portion to produce a harmonious whole; and one provision will not be given a meaning out of harmony or inconsistent with other provisions, although it might be susceptible of such construction if standing alone.

In our opinion, section 25 only excepts from disclosure information concerning that candidate's qualifications to register with the board or to receive a certificate as a certified public accountant. Several reasons prompt this conclusion. First, the third sentence of section 25 -- the one which refers to a candidate's "qualifications" -- is the only one of the three in that section which expressly makes certain information "confidential" and "not... subject to disclosure" under the Open Records Act. Second, the fact that this is the only sentence which explicitly makes information confidential must mean that neither of the other two sentences was intended to do so. If the legislature had meant for either of the first two sentences to shield from the general public "any" information concerning a candidate, then it would not have added the third sentence, which makes confidential a far narrower category of information. We cannot assume that the legislature intended to include a superfluous sentence. Cameron v. Terrell and Garrett, Inc.,

618 S.W.2d 535, 540 (Tex. 1981) (every word in a statute must be presumed to have been used for a purpose).

Having defined the scope of section 25, we must next decide whether a candidate's "qualifications" may include his name and home address. We conclude that a candidate's name could in no way be considered a "qualification." Likewise, we conclude that a candidate's home address is not in this category.

It has been suggested that a candidate's home address should be regarded as confidential under section 25 because it affords a clue as to whether the candidate satisfies certain statutory requirements for obtaining a certificate, see, e.g., V.T.C.S. art. 41a-1, §12(1) (requiring candidates to be United States citizens or to have met certain residency requirements), and it therefore constitutes "information... concerning the qualifications of [that] candidate." In point of fact, however, a candidate's home address only shows that the candidate has a home address. Without more, an address indicates nothing with respect to whether the candidate is a United States citizen or whether he meets applicable residency requirements. In our opinion, therefore, the link between a candidate's home address and whether he is qualified to register as a public accountant or to receive a certificate as a certified public accountant is too tenuous to warrant the conclusion that the address may be withheld from disclosure under section 25.

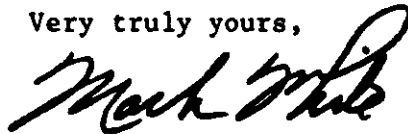
You also argue, in effect, that a candidate's name and address are protected from disclosure by common law privacy. We disagree. As we recently observed in Open Records Decision No. 318 (1982), the Texas Supreme Court has made it clear that to be excepted under a claim of common law privacy, information must:

contain highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities.

The information must also "not [be] of legitimate concern to the public." Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 683-85 (Tex. 1976). In our opinion, it cannot be reasonably argued that disclosure of the names and addresses of those individuals whose examination papers were lost, through no fault of their own, could be so "embarrassing" or so "highly objectionable" to them as to warrant the conclusion that the Industrial Accident Board test is satisfied here. See also The Becker CPA Review Course of California v. The Texas State Board of Public Accountancy, No. 336, 640 District Court of Travis County, Texas, 147th Judicial District (names and addresses of persons who applied to take C.P.A. exam and who passed exam are open to public).

In summary, we conclude that section 3(a)(3) does not protect from disclosure any of the requested information. We also conclude that the names and addresses of the examinees whose papers were lost may not be withheld under section 3(a)(1). You did not contend that any section other than section 3(a)(3) excepts from required disclosure any of the requested information other than the names and addresses of the examinees. All of the requested information must therefore be released.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Rick Gilpin
Jim Moellinger